

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DISTRICT**

In re:)	Case No. 17-17361
)	
RICHARD M. OSBORNE,)	Chapter 7
)	
Debtor.)	Judge Arthur I. Harris

**TRUSTEE’S MOTION FOR TURNOVER OF PROPERTY HELD IN ACCOUNTS
MAINTAINED BY DEBTOR IN POSSESSION**

Kari B. Coniglio (the “Trustee”), the acting interim chapter 7 trustee for the bankruptcy estate of Richard M. Osborne (the “Debtor”), moves (the “Motion”) for entry of an order authorizing and directing Huntington National Bank (“Huntington”) to turnover all funds now and hereafter held in accounts maintained by Richard M. Osborne Debtor in Possession to the Trustee’s account(s) at Independent Bank. In support of the Motion, the Trustee represents as follows:

Jurisdiction

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. On December 17, 2017, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code [Docket No. 1].
4. The Debtor’s bankruptcy proceeding was converted to a case under chapter 7 of the Bankruptcy Code on July 3, 2019 (the “Conversion Date”) [Docket No. 482].
5. On the Conversion Date, the Trustee was appointed the interim trustee for the Debtor’s estate [Docket No. 484].

Relief Requested

6. The Trustee requests entry of an order authorizing and directing Huntington to turnover all funds now and hereafter held in accounts maintained by Richard M. Osborne Debtor in Possession to the Trustee's account(s) at Independent Bank.

Basis for Relief Requested

7. All funds now or hereafter held by the Debtor are assets of the Debtor's bankruptcy estate. 11 U.S.C. § 541(a)(1), (7). The Trustee is authorized to take possession of property of the Debtor's bankruptcy estate. *Id.* §§ 303(g), 704(a). Huntington is required to deliver funds held in the Debtor's accounts to the Trustee. *Id.* §§ 542, 543. The Court may issue an order that is necessary or appropriate to carry out the provisions of title 11 of the United States Code. *Id.* § 105(a).

8. Prior to the Conversion Date, Richard M. Osborne Debtor in Possession maintained the following four accounts (the "DIP Accounts") at Huntington:

- a. Checking XXXXXX4835;
- b. Money Market XXXXXX1968;
- c. Money Market XXXXXX8602; and
- d. Money Market XXXXXX9288.

9. The DIP Accounts are property of the Debtor.

10. Counsel for Huntington informed the Trustee that it will not turnover funds in the DIP Accounts without a court order.

11. The Trustee, therefore, requests that the Court enter an order authorizing and directing Huntington to turnover all funds now and hereafter held in the DIP Accounts to the Trustee to the her account(s) at Independent Bank.

12. Upon the turnover of funds, the Trustee further requests that Huntington close the DIP Accounts.

Notice

13. Notice of the Motion has been given to (a) all persons or entities on the Master Service List [Docket No. 125], and (b) counsel to Huntington. The Trustee submits that no other or further notice need be given.

No Prior Request

14. Nor prior request for the relief sought in this Motion has been made to this or any other Court.

Conclusion

WHEREFORE, the Trustee respectfully requests entry of an order granting the relief requested herein and granting such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Patrick R. Akers

Drew T. Parobek (0016785)

Elia O. Woyt (0074109)

Carrie M. Brosius (0075484)

Patrick R. Akers (0095985)

VORYS, SATER, SEYMOUR AND PEASE LLP

200 Public Square, Suite 1400

Cleveland, Ohio 44114

(216) 479-6100

(216) 479-6060 (facsimile)

dtparobek@vorys.com

eowoyt@vorys.com

cmbrosius@vorys.com

prakers@vorys.com

Counsel to the Interim Trustee

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Trustee's Motion for Turnover of Property Held in Accounts Maintained by Debtor in Possession* was served via the Court's Electronic Case Filing System on July 30, 2019 on the following who are listed on the Court's Electronic Mail Notice List:

Patrick R. Akers on behalf of Trustee Kari B. Coniglio

prakers@vorys.com

Gregory P. Amend on behalf of Creditor First National Bank of Pennsylvania

gamend@bdblawn.com, grichards@bdblawn.com

Alison L. Archer on behalf of Interested Party Lakeland Community College

alison.archer@ohioattorneygeneral.gov,

Trish.Lazich@ohioattorneygeneral.gov; angelique.dennis-noland@ohioattorneygeneral.gov

Richard M. Bain on behalf of Interested Party Zachary B Burkons

rbain@meyersroman.com, mnowak@meyersroman.com; jray@meyersroman.com

Adam S. Baker on behalf of Creditor Michael E. Osborne, Sr.

abakerlaw@sbcglobal.net, adam@bakerlaw.us; abakerlaw@gmail.com

Austin B. Barnes, III on behalf of Creditor Tax Ease Ohio, LLC

abarnes@sandhu-law.com, bk1notice@sandhu-law.com

Robert D. Barr on behalf of Creditor Chicago Title Insurance Company

rbarr@koehler.law, rbarr@koehler.law

David T. Brady on behalf of Creditor Tax Ease Ohio, LLC

DBrady@Sandhu-Law.com, bk1notice@sandhu-law.com

Carrie M. Brosius on behalf of Trustee Kari B. Coniglio

cm Brosius@vorys.com, mdwalkuski@vorys.com

Kari B. Coniglio

kbconiglio@vorys.com, mdwalkuski@vorys.com; kbc@trustesolutions.net; jncash2@vorys.com

LeAnn E. Covey on behalf of Creditor Bank of America, N.A.

bknotice@clunkhooose.com

Richard W. DiBella on behalf of Creditor Nationwide Mutual Fire Insurance Company

rdibella@dgmblaw.com

Bryan J. Farkas on behalf of Trustee Kari B. Coniglio
bjfarkas@vorys.com

Stephen R. Franks on behalf of Creditor Bank of America, N.A.
amps@manleydeas.com

Stephen John Futterer on behalf of Creditor City of Willoughby
sjfutterer@sbcglobal.net, r43087@notify.bestcase.com

Melody Dugic Gazda on behalf of Plaintiff Home Savings Bank
mgazda@hendersoncovington.com

Melody Dugic Gazda on behalf of Respondent Home Savings Bank, Successor by Merger to The Home Savings & Loan Company of Youngstown, Ohio
mgazda@hendersoncovington.com

Michael R. Hamed on behalf of Interested Party Gas Natural Inc.
mhamed@kushnerhamed.com, kgross@kushnerhamed.com

Heather E. Heberlein on behalf of Creditor First National Bank of Pennsylvania
hheberlein@bdblawn.com, vgum@bdblawn.com

Dennis J. Kaselak on behalf of Claimant Diane M. Osborne
dkaselak@peteribold.com, Cynthia@peteribold.com

Dennis J. Kaselak on behalf of Defendant Diane M. Osborne
dkaselak@peteribold.com, Cynthia@peteribold.com

Christopher J. Klym on behalf of Creditor Ohio Department of Taxation
bk@hhkwlaw.com

Jerry R. Krzys on behalf of Plaintiff Home Savings Bank
jkrzys@hendersoncovington.com, jerrykrzys@gmail.com

Matthew H. Matheney on behalf of Creditor First National Bank of Pennsylvania
mmatheney@bdblawn.com, bhajduk@bdblawn.com

Shannon M. McCormick on behalf of Creditor Center Street School Condominiums and coachhouses Unit Owners' Association, Inc.
bankruptcy@kamancus.com

Kelly Neal on behalf of Creditor The Huntington National Bank
kelly.neal@bipc.com, donna.curcio@bipc.com

David M. Neumann on behalf of Interested Party Zachary B Burkons

dneumann@meyersroman.com, jray@meyersroman.com; mnowak@meyersroman.com

Timothy P. Palmer on behalf of Creditor The Huntington National Bank
timothy.palmer@bipc.com, donna.curcio@bipc.com

Drew T. Parobek on behalf of Trustee Kari B. Coniglio
dtparobek@vorys.com, mdwalkuski@vorys.com

Tricia L. Pycraft on behalf of Accountant Rea & Associates, Inc.
tpycraft@ccj.com, bowman@ccj.com

Kirk W. Roessler on behalf of Creditor Estate of Jerome T. Osborne
kroessler@walterhav.com,
kballa@walterhav.com; slasalvia@walterhav.com; deppler@walterhav.com

Kirk W. Roessler on behalf of Creditor Osborne Farms, LLC fka Huron Lime Company, LLC
kroessler@walterhav.com,
kballa@walterhav.com; slasalvia@walterhav.com; deppler@walterhav.com

John J. Rutter on behalf of Creditor Mentor Lumber & Supply Co.
jrutter@ralaw.com

Frederic P. Schwieg on behalf of Attorney Frederic P. Schwieg
fschwieg@schwieglaw.com

Frederic P. Schwieg on behalf of Cross-Claimant Richard M. Osborne
fschwieg@schwieglaw.com

Frederic P. Schwieg on behalf of Debtor Richard M. Osborne
fschwieg@schwieglaw.com

Frederic P. Schwieg on behalf of Defendant Richard M. Osborne
fschwieg@schwieglaw.com

Michael J. Sikora, III on behalf of Creditor Chicago Title Insurance Company
msikora@sikoralaw.com, aarasmith@sikoralaw.com

Nathaniel R. Sinn on behalf of Creditor First National Bank of Pennsylvania
nsinn@bdblawn.com, grichards@bdblawn.com

Rachel L. Steinlage on behalf of Interested Party Zachary B Burkons
rsteinlage@meyersroman.com,
jray@meyersroman.com; mnowak@meyersroman.com; rbain@meyersroman.com

Richard J. Thomas on behalf of Plaintiff Home Savings Bank
rthomas@hendersoncovington.com, mgazda@hendersoncovington.com

Andrew M. Tomko on behalf of Creditor Tax Ease Ohio, LLC
atomko@sandhu-law.com, bk1notice@sandhu-law.com

Jeffrey C. Toole on behalf of Interested Party Zachary B Burkons
toole@buckleyking.com, young@buckleyking.com

Michael S. Tucker on behalf of Creditor Citizens Bank, N.A.
mtucker@ulmer.com

Phyllis A. Ulrich on behalf of Creditor The Huntington National Bank
bankruptcy@carlisle-law.com, bankruptcy@carlisle-law.com

Leslie E. Wargo on behalf of Cross-Claimant Richard M. Osborne
Leslie@Wargo-Law.com

Leslie E. Wargo on behalf of Debtor Richard M. Osborne
Leslie@Wargo-Law.com

Leslie E. Wargo on behalf of Spec. Counsel Leslie E Wargo
Leslie@Wargo-Law.com

Elia O. Woyt on behalf of Trustee Kari B. Coniglio
eowoyt@vorys.com, eowoyt@vorys.com; mdwalkuski@vorys.com

Maria D. Giannirakis ust06 on behalf of U.S. Trustee United States Trustee
maria.d.giannirakis@usdoj.gov

Scott R. Belhorn ust35 on behalf of U.S. Trustee United States Trustee
Scott.R.Belhorn@usdoj.gov

/s/ Patrick R. Akers

Patrick R. Akers (0095985)

Counsel to the Interim Trustee